[Pages 8035-8111 are contained in the Ramzi Binalshibh record due to severance order, Appellate Exhibit 312. Due to severance order currently being held in abeyance, KSM et al. has resumed.]

[The R.M.C. 803 session was called to order at 0904, 14 August 2014.]

MJ [COL POHL]: The commission is called to order.

Trial Counsel, who is here to represent the government?

STC [MR. CAMPOAMOR-SANCHEZ]: Good morning, Your Honor.

MJ [COL POHL]: Good morning.

STC [MR. CAMPOAMOR-SANCHEZ]: For the government today you have Mr. Vijay Shanker, Kevin Driscoll, and me, Fernando Campoamor-Sanchez of the Special Review Team.

Your Honor, as a preliminary matter, Mr. Shanker has yet to present his detailing qualifications. We would ask for the opportunity to do that.

MJ [COL POHL]: Mr. Shanker, please put your detailing qualifications on the record.

STC [MR. SHANKER]: Good morning, Your Honor.

MJ [COL POHL]: Good morning.

STC [MR. SHANKER]: I have been detailed to this military commission by the Chief Prosecutor of military commissions. I

1 am qualified under Rule for Military Commissions 505(d) and I
2 have been previously sworn in accordance with Rule for
3 Military Commissions 807. I have not acted in any manner that
4 might tend to disqualify me in this proceeding.
5 MJ [COL POHL]: Trial Counsel, just to be clear, would it
6 be fair to say that you are here to address only 292 issues
7 and that if we move to something else, there will be a switch
8 of trial teams?
9 STC [MR. CAMPOAMOR-SANCHEZ]: That is correct, Your Honor.
10 We are here ready to address 292RR, 292SS, and even 292TT,
11 anything related to 292 that we can.
12 MJ [COL POHL]: Mr. Nevin, who is here for Mr. Mohammad?
13 LDC [MR. NEVIN]: I am here, Your Honor, Major Wright,
14 Major Poteet, and Mr. Sowards.
15 MJ [COL POHL]: Ms. Bormann?
16 LDC [MS. BORMANN]: Judge, present in court are Captain
17 Schwartz, Lieutenant Commander Hatcher. Missing is Captain
18 Swensen. We had asked the court to move this session either a
19 week earlier or a week later because we had advised the
20 commission that Captain Swensen was unable to be in
21 Guantanamo Bay this week, and he is still unable to be in
22 Guantanamo Bay this week. The commission ruled that that was
23 not a sufficient reason to move the commission's previously

1 set dates.
2 MJ [COL POHL]: Okay. Thank you.
3 Mr. Harrington?
4 LDC [MR. HARRINGTON]: Judge, in addition to me is
5 Lieutenant Commander Bogucki, Major Balfantz and Commander
6 Nhan.
7 MJ [COL POHL]: Thank you.
8 Mr. Connell?
9 LDC [MR. CONNELL]: Present are James Connell and
10 Lieutenant Colonel Sterling Thomas, United States Air Force.
11 MJ [COL POHL]: And Mr. Ruiz?
12 LDC [MR. RUIZ]: Judge, I am present, Lieutenant Colonel
13 Sean Gleason and Lieutenant Colonel Jennifer Williams.
14 MJ [COL POHL]: Has Colonel Williams put her detailing
15 qualifications on the record?
16 LDC [MR. RUIZ]: No, Judge.
17 MJ [COL POHL]: Colonel Williams, please do that.
18 ADDC [LtCol WILLIAMS]: Good morning, Judge. I am
19 Lieutenant Colonel Jennifer Niles Williams, United States Army
20 Reserve. I have been detailed to this commission by Colonel
21 Karen Mayberry, who is chief defense counsel. I am qualified
22 to serve as military defense counsel under Rule 505 of the
23 Rule for Military Commissions and I have not acted in any

1 disqualifying manner. My detailing memorandum is filed as
2 Appellate Exhibit 004F (sic) (MAH).
3 MJ [COL POHL]: Thank you.
4 Mr. Hawsawi, do you want to include Lieutenant
5 Colonel Williams as part of your defense team?
6 ACC [MR. AL HAWSAWI]: Yes.
7 MJ [COL POHL]: As a practice, the first thing we will do
8 today is I will advise the accused of their rights to be
9 present and their right to waive said presence. So this is
10 directed to all of the accused. You have the right to be
11 present during all sessions of the commission. If you request
12 to absent yourself from any session, such absence must be
13 voluntary and of your own free will.
14 Your voluntary absence from any session of the
15 commission is an unequivocal waiver of the right to be present
16 during that session. Your absence from any session may
17 negatively affected the presentation of the defense in your
18 case. Your failure to meet with and cooperate with your
19 defense counsel may also negatively affect the presentation of
20 your case.
21 Under certain circumstances, your attendance at a
22 session can be compelled regardless of your personal desire
23 not to be present. Regardless of your voluntary waiver to

1 attend a particular session of the commission, you have the
2 right at any time to decide to attend any subsequent session.
3 If you decide not to attend the morning session but wish to
4 attend the afternoon session, you must notify the guard force
5 of your desires. Assuming there is enough time to arrange
6 transportation, you will then be allowed to attend the
7 afternoon session.
8 You will be informed of the time and date of each
9 commission session prior to the session to afford you the
10 opportunity to decide whether you wish to attend that session.
11 Mr. Mohammad, do you understand what I just explained
12 to you?
13 ACC [MR. MOHAMMAD]: Yes.
14 MJ [COL POHL]: Mr. Bin'Attash, do you understand what I
15 just explained?
16 ACC [MR. BIN'ATTASH]: Yes.
17 MJ [COL POHL]: Mr. Ali, do you understand what I just
18 explained to you?
19 ACC [MR. AZIZ ALI]: Yes.
20 MJ [COL POHL]: And Mr. Hawsawi, do you understand what I
21 just explained to you?
22 ACC [MR. AL HAWSAWI]: Yes.
23 MJ [COL POHL]: Addressing the 299 -- excuse me, the 292

1 series, on 5 August 2014 the government filed 292RR which, as
2 I read it, was directed primarily to reconsideration of the
3 order as far -- the order being 292QQ, as it relates to
4 Mr. Binalshibh's team.
5 Subsequently, on 8 August 2014 the government filed
6 AE 313D requesting to amend the docket order and, as far as it
7 relates to 292RR, wanted to put it on the docket order.
8 Again, as both parties are aware, the standard practice is
9 counsel have 14 days to file a reply brief under normal
10 circumstances. And as I read the conference with opposing
11 parties from 29 -- excuse me, 313D, there does not appear to
12 be a position that Mr. Harrington's team took on the amending.
13 And so, Mr. Harrington, what is your position? Are
14 you prepared to discuss 292RR, or do you want your 14 days to
15 file a submission?
16 LDC [MR. HARRINGTON]: Judge, we want the full time to
17 file our response.
18 MJ [COL POHL]: Okay. Mr. Ruiz?
19 LDC [MR. RUIZ]: Good morning, Judge.
20 MJ [COL POHL]: Good morning.
21 LDC [MR. RUIZ]: Judge, I know I made my position
22 abundantly clear in our pleadings, but for the sake of
23 completeness I would like to articulate that as well

1 today ----
2 MJ [COL POHL]: Just so I am clear, on 292?
3 LDC [MR. RUIZ]: Yes, sir.
4 MJ [COL POHL]: Go ahead.
5 LDC [MR. RUIZ]: On behalf of Mr. Hawsawi, I object to
6 proceeding on these motions at this time with Mr. Hawsawi
7 continued to be joined in this case. We will not acquiesce to
8 continued pretrial delay on this issue. It is one we have
9 already addressed with the court. We have articulated clearly
10 that we do not feel we are operating under a conflict and we
11 are prepared to proceed with longstanding motions that effect
12 Mr. Hawsawi's progression and the presentation of his defense.
13 MJ [COL POHL]: Okay. Thank you.
14 On the 11th of August, the Special Review Team filed
15 292TT requesting clarification of the order of 292QQ. Again,
16 this would appear to impact upon all five defense teams.
17 STC [MR. CAMPOAMOR-SANCHEZ]: Yes, Your Honor, although it
18 specifically relates to the prophylactic measures that the
19 court envisioned. They have been opposed by all five teams,
20 is my understanding.
21 MJ [COL POHL]: I will just go in order. Mr. Nevin, do
22 you wish to address this now or do you wish to take the
23 14 days to file a written response?

1 LDC [MR. NEVIN]: The latter, Your Honor, please.
2 MJ [COL POHL]: Pursuant to the Rules of Court, you will
3 be given the 14 days.
4 Now, that turns to two defense motions, which are
5 292SS filed on 7 August and 292VV filed on 13 August. Now,
6 292VV is a pleading only submitted by Mr. Mohammad's team and
7 292SS has only been submitted by Mr. Nevin, and Mr. Connell on
8 behalf of Mr. Ali.
9 Trial Counsel, do you wish to address these issues
10 today without being given an opportunity to file a written
11 response?
12 STC [MR. CAMPOAMOR-SANCHEZ]: Your Honor, we are prepared
13 to address 292SS. We are not prepared to address 292VV simply
14 because I have not even read it yet.
15 MJ [COL POHL]: Okay. That would seem to be a reasonable
16 request, since it was just filed yesterday. Okay.
17 LDC [MS. BORMANN]: Judge, if I just may be heard?
18 MJ [COL POHL]: Yes, ma'am.
19 LDC [MS. BORMANN]: Under the standing rule of the
20 commission, Mr. Bin'Attash, without specifically unjoining a
21 motion, joins those motions, so I just want to make note for
22 the record.
23 MJ [COL POHL]: I noticed there was no -- you had not

1 signed the motion. That was ----

2 LDC [MS. BORMANN]: I had not signed the motion, but we,

3 by rule of court, have joined it.

4 MJ [COL POHL]: Okay. Mr. Harrington, is your position

5 the same?

6 LDC [MR. HARRINGTON]: It is, Judge.

7 MJ [COL POHL]: But, Mr. Ruiz, your position is not the

8 same?

9 LDC [MR. RUIZ]: That's correct, Judge. I guess, based on

10 the rule of court, we have to affirmatively unjoin.

11 MJ [COL POHL]: Okay.

12 LDC [MR. RUIZ]: And we do that at this time with respect

13 to both 292SS and 292VV.

14 MJ [COL POHL]: Okay. Well, Mr. Nevin or Mr. Connell,

15 since you both signed it first, whichever one of you wish to

16 be heard on it first can go ahead.

17 **[Both counsel approached.]**

18 LDC [MR. NEVIN]: As you can see, both Mr. Connell and I

19 didn't plan that, Your Honor.

20 Before -- and I'm going to address 292SS, as that is

21 a motion asking the military commission to reconsider its

22 order in 292QQ which found that there was no conflict of

23 interest with respect to Mr. Mohammad, and with respect to

1 other defendants, but of course I speak for Mr. Mohammad
2 today.
3 Before I do that, Your Honor, could I say this about
4 292VV. We originally obtained an AE number and filed that as
5 AE 316, and we did that because it is a motion to reconsider
6 the court's denial of our motion to compel discovery -- and I
7 see I have misspoken again. It's a motion to compel a
8 response to discovery, and this is exactly really the point I
9 wanted to make. It's a motion to compel a response to
10 discovery on a different theory than the existence of a
11 conflict of interest.
12 And if the military commission will recall, there was
13 some discussion during argument on the 292 series that the
14 special trial counsel would be willing to provide discovery,
15 some discovery, if it were requested by conflict-free counsel
16 and if it were designed for purposes other than determining
17 the existence of a conflict. That's what that motion gets to
18 and it attempts to articulate a different ground for providing
19 the discovery. And so we wanted it not to be in the same
20 line, the same series as the materials related to a conflict.
21 When we proceeded to file it -- or attempt to file it
22 yesterday as 316, we were told that it needed to be in the 292
23 series, and that's how we filed it, as 292VV, but I wanted the

1 military commission to be aware of that.
2 MJ [COL POHL]: Yes. I understand, Mr. Nevin, that when
3 it was filed, usually I don't get involved in the numbering of
4 motions. But this one, after looking at it, you can make an
5 argument both ways, and I thought it was cleaner to keep it in
6 the 292 series. But I understand there are different issues
7 in it, but it does kind of relate back to 292D and 292U, but
8 that's why. And, again, it's just a housekeeping matter.
9 LDC [MR. NEVIN]: It was on the same information, but
10 importantly on a different theory.
11 MJ [COL POHL]: I understand. Go ahead.
12 LDC [MR. NEVIN]: Now on 292SS, the motion to
13 reconsider ----
14 MJ [COL POHL]: I know the government didn't want to talk
15 about VV, but since you raised it ----
16 LDC [MR. NEVIN]: Yes, sir.
17 MJ [COL POHL]: ---- the way I read this, particularly the
18 e-mail traffic at the end is there is some discussions going
19 between you and the government on what they will give.
20 LDC [MR. NEVIN]: Yes. And counsel and I had a chance to
21 speak briefly a couple of days ago, and we haven't spoken
22 again. I think that I heard counsel in the response to the
23 conference suggesting that we would need to abandon our

1 position that there was a conflict. My last e-mail to counsel
2 says why do you have that as a condition? And I haven't had a
3 response to that yet.
4 I would say negotiations are ongoing, but -- speaking
5 strictly literally. But I wanted this to be in front of the
6 commission at the earliest time in case the negotiations
7 aren't fruitful.
8 MJ [COL POHL]: Okay, fine. Okay.
9 LDC [MR. NEVIN]: And now on to 292SS?
10 MJ [COL POHL]: Yes, please.
11 LDC [MR. NEVIN]: This is a motion to reconsider the
12 court's ruling in 292QQ, QQ, that we had not made a sufficient
13 showing to justify the thorough inquiry on behalf of the
14 military commission that Holloway requires, and, Your Honor,
15 we do ask that you reconsider that, and I can tell you why
16 succinctly.
17 And I will say we read the -- we read QQ hopefully
18 because we heard the military commission articulating a number
19 of ideas that we had argued and resolving them in -- you know,
20 in agreement with the arguments we had made. So, I mean, the
21 military commission makes the point that conflicts aren't
22 created only by criminal investigations and they are not --
23 they don't arise only if the attorney is under investigation,

1 as opposed to other team members, that conflicts can arise
2 from administrative or disciplinary investigations.
3 And we heard the -- read the military commission
4 saying the declarations of the two FBI supervisory special
5 agents were incomplete, and I'm speaking now, referring to
6 pages 28 to 29 of 292QQ. The military commission makes the
7 point that these declarations were drafted artfully,
8 carefully. The military commission uses the term "parsing,"
9 "The parsing of the assertions of the government's knowledge
10 of investigative or adverse actions does not provide the
11 commission with the confidence necessary," and so on.
12 It makes the point that the agents specifically said
13 they weren't providing the commission with everything they
14 know. They again and again limited their declaration to the
15 existence or not of criminal investigations. They were
16 careful to limit themselves to saying there is no
17 investigation now by the FBI, so far as we know, or by
18 Ms. Flannery in a later declaration, and there is no reference
19 to intelligence-related investigations or relations --
20 investigations, rather, or investigations by entities other
21 than the FBI, aside, of course, by the reference to the
22 transfer to the Department of Defense of the one investigation
23 related to a team member of the Binalshibh team. And based on

1 that, with respect to Mr. Binalshibh, the court ruled that
2 further inquiry is proper.
3 And I think the most pressing thing I can say to the
4 military commission is that the 292QQ goes past, doesn't
5 address, doesn't mention, doesn't deal with the significant
6 amount of evidence that we gave you that Mr. Mohammad's team
7 is in exactly the same position as Mr. Binalshibh's team. And
8 I say "exactly." Obviously there are factual differences.
9 But, as a practical matter, when you look at it from the
10 overhead view, what you see is that we are in the same boat
11 they are, and I am referring to this.
12 First, the FBI agents who went to question
13 Mr. Binalshibh's DSO asked questions about Mr. Mohammad's team
14 and -- quote, "and anyone on it," closed quote. They asked
15 whether anything had been improperly done by other teams. The
16 declaration of the FBI agent says that the investigation was
17 only of a nonattorney member of the Binalshibh team, but that
18 flies squarely in the face of Mr. Harrington's declaration,
19 that the agents were there questioning about our team in
20 particular, and then more generally a reference to all the
21 teams.
22 And we pointed out to the military commission, I
23 believe, under the joint defense privilege, there is an

1 extent, a significant extent -- it's not 100 percent overlap,
2 but there is an extent to which these parties work together.
3 And we mentioned that we had traveled in the Middle East with
4 Mr. Binalshibh's linguist and that our linguist had traveled
5 in the Middle East with Mr. al Baluchi's team and that we have
6 shared information and discussed theories of defense, and all
7 of these matters put us in the same position that
8 Mr. Binalshibh is in.
9 We also appreciated the military commission observing
10 the language from the U.S. Supreme Court opinions that the
11 statements of counsel are made virtually under oath, and we
12 saw that the military commission credited Mr. Hawsawi's
13 counsel's statements that he was not conflicted and,
14 therefore, that supported the military commission's conclusion
15 that there was no conflict with respect to him. But the
16 military commission doesn't apparently give any consideration
17 or any judgment about the quality of the representations that
18 were made on behalf of Mr. Mohammad.
19 And I will say in addition that, because of the
20 unique circumstances of that, of the way this situation
21 developed, that Mr. Hawsawi was in a -- that counsel for
22 Mr. Hawsawi was in a position to interview the team member who
23 was integrally involved in the investigation from the

1 government's side, who set up the interview and who put the
2 parties together with the FBI. Mr. Hawsawi's counsel was in a
3 position to interview that person. He was a team member. And
4 that's something that is not true about us, and they have the
5 position they have, but I will point out that they stand in a
6 slightly different position than we do on that subject.
7 So we -- I will simply remind the military commission
8 that, that I told you affirmatively that I was pulling my
9 punches and trimming my sails -- that's a language from
10 page 7911 of the transcript of the June proceedings -- and I
11 know that in 292QQ the military commission acknowledged that I
12 had stated that the investigation of Mr. Binalshibh had had a
13 chilling effect. That's at page 23.
14 There was a reference to Professor Fox's affidavit in
15 292QQ, but it doesn't acknowledge that -- the central point
16 that Professor Fox made, which is that when the parties are in
17 a position, when the attorneys and the team are in a position
18 of seeing multiple investigations arise and having attempts
19 made to intrude on the defense teams, that this creates an
20 environment of restricted advocacy, and restricted advocacy is
21 exactly what leads in the final analysis to a finding of
22 ineffective assistance of counsel and is inimical of
23 proceedings like this.

1 Now, those arguments, to be sure, end up getting made
2 after the fact typically, so that there has been a conviction,
3 there has been a death sentence, and now there are new lawyers
4 who have stepped into the picture and are filing writs and
5 alleging ineffective assistance of counsel, and that's where
6 the analysis comes from. But we have the benefit here of --
7 of looking prospectively, and I will say more about that in a
8 minute.
9 But we mentioned to you that we had canceled a very
10 important trip overseas to conduct investigation, and that
11 this, the trip that we canceled, had substantial impact on our
12 mitigation investigation and has set it back considerably.
13 And we are still in the process of trying to recover from that
14 and trying to get ourselves back to zero, and we haven't been
15 able to do that yet.
16 So we are left with a number of unanswered questions
17 here: Is there a noncriminal investigation, the possibility
18 that the FBI left a poison pill, which is to say instructions
19 to a team member to refrain from taking perfectly legal
20 actions that hasn't come to our attention, and -- or whether
21 the team member has been forced to engage in further
22 cooperation with the FBI.
23 And we -- on the one hand it's not a matter of a

1 remark about the credibility of our linguist. It's more about
2 the conundrum of asking a person who may be -- may have been
3 intimidated and sworn to silence, "Have you been intimidated
4 and sworn to silence?" And if they say no or if they say yes,
5 the underlying subject matter of the inquiry doesn't give you
6 a great deal of faith in the situation.
7 MJ [COL POHL]: In that scenario, Mr. Nevin, if the
8 individual may not be willing to come forward, what are you
9 left with, whether or not such an individual even exists,
10 except by the representations of the FBI?
11 LDC [MR. NEVIN]: I don't have another way of approaching
12 it. That's why -- this is really what this is all about, is
13 you might say it connects -- this is to say we need the
14 thorough inquiry that Holloway refers to. It hasn't taken
15 place. We haven't been put in a position where we can make an
16 informed judgment about what's going on, and by being provided
17 the letterhead memoranda or the 302s or the police reports
18 generally that relate to the investigation, that's what we
19 have asked for. It's what we are asking for in 292VV, it's
20 what we asked for, as the court pointed out, in 292U
21 previously, is to be able to see this so we can make some
22 sense of this.
23 We have made efforts to have an independent counsel

1 come to speak to Mr. Mohammad about this to give an
2 independent opinion to him about should I continue to trust my
3 lawyers.
4 MJ [COL POHL]: Well, Mr. Nevin, let me ask you another
5 question just on that. If some of those materials are
6 classified -- let's assume that they are ----
7 LDC [MR. NEVIN]: Okay.
8 MJ [COL POHL]: You know where this is going?
9 LDC [MR. NEVIN]: Yes, sir.
10 MJ [COL POHL]: Now, this isn't Mr. Connell's problem, but
11 it appears to be your problem, is we are still -- you are
12 still refusing to sign the MOU, and so are they supposed to
13 give it to you, give you classified materials for this issue
14 even though you failed to -- you have chosen not to sign the
15 MOU?
16 LDC [MR. NEVIN]: Having already sworn more times than I
17 can recall that I won't reveal classified information to
18 anyone who is not entitled to receive it ----
19 MJ [COL POHL]: What you are basically saying is you
20 don't -- that end result is you are basically saying you don't
21 have to sign the MOU.
22 LDC [MR. NEVIN]: That's the argument that we are
23 making ----

1 MJ [COL POHL]: In 13, yes, I know. I have heard it a
2 number of times, and I guess I am going to hear it again.
3 I am simply saying the rules say that upon request
4 from the prosecution, the court will issue a protective order,
5 okay? That's what it says. Now, you seem to be saying, well,
6 they may say that, but since we have signed other stuff, we
7 don't have to sign this redundant MOU.
8 But what I am simply saying is as we stand here now,
9 is four of the defense teams are precluded from receiving
10 classified information because of the protective order issue.
11 So how can you ----
12 LDC [MR. NEVIN]: How is Mr. Mohammad going to make a
13 decision about this if he doesn't know what the investigation
14 was about?
15 MJ [COL POHL]: How are you going to get classified
16 information without resolving the protective order issue?
17 LDC [MR. NEVIN]: I mean ----
18 MJ [COL POHL]: He is not going to get it anyway, which is
19 one of your objections to the protective order.
20 LDC [MR. NEVIN]: How does he waive a conflict if he
21 doesn't know what the conflict is?
22 MJ [COL POHL]: I am not sure why we keep asking questions
23 back and forth to each other because I am not sure we are

1 getting anywhere.
2 LDC [MR. NEVIN]: Possibly because neither of us has an
3 answer. I mean, it's a conundrum, I mean, and I understand
4 what the military commission is saying ----
5 MJ [COL POHL]: It's a conundrum created by you on the
6 classified information. I mean, these orders are put out in
7 every case involving classified information. There may be
8 little word differences and things like that. The rules say
9 you have to do it. You say you don't want to sign it, and
10 that's where we are at.
11 LDC [MR. NEVIN]: But you have provided, and we will soon
12 be arguing 013III, but you have issued a protective order
13 and it ----
14 MJ [COL POHL]: Let me ask you this, okay? Is it your
15 position that you are bound by the protective order even
16 without signing the MOU?
17 LDC [MR. NEVIN]: Of course. It's an order of the court.
18 MJ [COL POHL]: Okay. So the only issue we have now
19 before us with 013II, as much as I hate to visit it at this
20 point, from your perspective, is the wording of the MOU?
21 LDC [MR. NEVIN]: This -- I mean, and we laid this out in
22 013III. It requires us to accept discovery. It says you will
23 accept discovery. You will take it. And it allows the

1 government to get off the hook of satisfying its discovery
2 obligation without doing what it has to do under the rules,
3 which is give it to Mr. Mohammad.
4 But, Your Honor, none of this implicates any of that.
5 Mr. Mohammad has to have the information. He can't -- we
6 can't bring in independent counsel and have independent
7 counsel sit down with Mr. Mohammad and say, "I can't tell you
8 what the problem was with your lawyers because that's all
9 classified, but I think you should waive the conflict." I
10 mean, that's not a valid waiver of the conflict.
11 Your Honor, the problem here is that the government
12 made a decision to invade our defense teams. That was not a
13 decision that we made. It wasn't something I asked them to do
14 or any of the rest of us did. They created this problem, and
15 it is -- I used the term "poison pill" before. It's a
16 significant problem in the way this litigation goes forward
17 because we are right here in this situation because the
18 government chose to do this.
19 So ----
20 MJ [COL POHL]: Go ahead. Move on.
21 LDC [MR. NEVIN]: And I was talking about the things that
22 we don't know and that leaves us in a state of uncertainty and
23 that led me to make that remark about being around my campfire

1 with the wolves howling in the darkness. Another one of those
2 wolf howls is the one that's in 018Y, and I spoke of that
3 previously. That, of course, remains unresolved by 292QQ.
4 So the effect of this is it strikes at a number of --
5 a number of things that are inherent, that are necessary in
6 the job that we are doing as lawyers, and of course that is to
7 act as the loyal opposition, to press the government in -- on
8 every front, to not pull our punches, to not trim our sails.
9 And we have -- this has sown chaos; I will say it has sown
10 chaos in our team, in our defense team.
11 We have team members who are leaving the team
12 because -- in part because of their -- because of what this --
13 what the pendency of an investigation like this, even one that
14 now the government backs off and says we are not, that
15 investigation is closed. What that does to people's state of
16 mind, it's not pleasant.
17 And one of the things we are obligated to do and
18 which we seek to do under the ABA guidelines is to develop a
19 trusting relationship with Mr. Mohammad, and here we have a
20 linguist waiting 15 months to advise of being interviewed
21 about team matters by the FBI, doing that on orders, a valued
22 team member, someone who was important to the defense and
23 would have developed a relationship with Mr. Mohammad.

1 And I think the military commission is aware that
2 there are other matters -- I am referring to 283 now -- the
3 matters related to Major Wright being forced off the team.
4 These things -- this comes at a particularly difficult time,
5 but this -- these effects altogether have made it very
6 difficult, have strained our relationship with Mr. Mohammad
7 significantly.
8 So I read that the military commission made four
9 conclusions in determining that there was no -- that there was
10 no conflict or that there was -- excuse me, that there was no
11 requirement for the thorough inquiry that Holloway describes.
12 The first was that we didn't do any less than our
13 professional utmost, and I think that's a quote, during the
14 17-month period the FBI succeeded in concealing its interview
15 of our linguist. And just to be clear, we didn't know about
16 the investigation during that period, and it didn't have an
17 impact on us. That's not the concern. The concern is the --
18 what effect that has on us prospectively, going forward, once
19 it did come to light.
20 Now, I made the point to the military commission when
21 I was here before arguing this -- I made the point that there
22 had been prior investigations of counsel, of me and of other
23 counsel in the case, and I referred to the probable cause

1 affidavit in the Kiriakou case, and there have been -- there
2 is the allegation contained in 018Y, and it was during the
3 course of that conversation that I used the analogy of being
4 huddled around the campfire. These things are frightening and
5 troubling, and they cause you to trim your sails and pull your
6 punches even when you don't really mean to, in ways that you
7 possibly even, in terms of your own self-awareness, don't
8 really completely understand.
9 Those things predated our learning about the problem
10 with the linguist, and so when I say we didn't know about the
11 problem with the linguist and it didn't have an impact on us
12 until we knew about it -- because obviously we don't know what
13 we don't know, but there were other factors in play during
14 that time, and we don't want there to be any mistake about
15 that.
16 The second point that the military commission made
17 was that the chilling effect was de minimis given the length
18 of time since arraignment, and that is page 31 of the military
19 commission's order, and there was no authority cited for that
20 being a factor. And, you know, the fact that it took
21 17 months and an order of this court to find out about it is
22 just a product of -- just a product of how successful the
23 FBI's intimidation of our linguist was. It doesn't provide

1 any -- it doesn't change the dynamic of our situation at all.
2 And exactly the same timelines apply to the Binalshibh case,
3 to the Binalshibh situation. We don't stand in any different
4 timeframe or any shoes -- any different shoes with respect to
5 that timeframe.
6 The third factor was that we brought it to the
7 military commission's attention promptly. And, of course, we
8 did that, and, of course, Mr. Binalshibh's counsel did the
9 same thing, and we were obligated to do that as we said in the
10 original 292. But that doesn't -- that doesn't change the
11 prejudice. It doesn't make the prejudice any less.
12 And the military commission made the point that the
13 U.S. Government was isolated from these issues, but, you know,
14 Your Honor, it's -- the United States of America is the
15 plaintiff in this case. I don't know what the Office of the
16 Chief Prosecutor knew and when they knew it and I am not
17 making any allegations, but it's the United States of America.
18 The same factor is present in exactly the same way in the
19 Binalshibh case as well, but there was a different result
20 there.
21 So our request is that -- is this, is that you -- is
22 that you reverse the order or reconsider the order and direct
23 that the inquiry -- the thorough inquiry go forward. Because

1 we are in the position now of either continuing to represent
2 Mr. Mohammad not knowing if we are under an ethical cloud or
3 not being clear about what the outcome of the inquiry would
4 be, or we file a motion for leave to withdraw, but given the
5 fact that we have been representing Mr. Mohammad over a long
6 period of time, that's not a very palatable or useful option.
7 I am not sure that makes him any better. Maybe it would, but
8 that's a difficult decision to make.
9 And the third would be to somehow get a waiver of the
10 conflict from him, but he is in no better position, nor would
11 independent counsel be in any better position, to determine
12 whether -- determine whether it could be waived than we are.
13 So we are put in the position of having this trilemma
14 that there is really no way out of for us. That's what 292SS
15 in a nutshell says, and we ask that you reconsider and order
16 that we be provided the discovery or the thorough inquiry that
17 Holloway provides. That's my argument.
18 MJ [COL POHL]: Thank you, Mr. Nevin.
19 LDC [MR. CONNELL]: Good morning, Your Honor.
20 MJ [COL POHL]: Good morning, Mr. Connell.
21 LDC [MR. CONNELL]: Your Honor, like Mr. Mohammad, we have
22 joined a motion to reconsider AE 292, the motion for conflict
23 inquiry. 292D, as supplemented, the motion for evidence of

1 witnesses, but we also have the added issue of 292L, the
2 motion for independent counsel to advise Mr. al Baluchi on the
3 question of the conflict. All three of those motions were
4 denied in 292QQ and we move to reconsider them in 292SS.
5 There have been some new facts which have developed
6 since June, and I respectfully suggest there were some facts
7 that were overlooked in 292QQ which would amount to a manifest
8 injustice, so we request reconsideration.
9 On 16 June in this commission, the Special Litigation
10 Team averred to the military commission that the FBI
11 investigation is over with a, at that time, strong emphasis on
12 the use of "is," because it was only recently closed
13 administratively by the FBI.
14 On 18 June, two days afterward, an attorney member of
15 Mr. Binalshibh's team met with Mr. Dante James, the
16 compromised DSO, regarding the investigation, and that
17 attorney member was terminated from Mr. Binalshibh's team
18 effective 22 June. These facts appear in 292II.
19 On 23 June, the Office of Special Security, which is
20 the branch of the Washington Headquarters Service which has
21 responsibility for our security, advised Mr. Harrington that
22 it was suspending the sensitive compartmented information
23 access of a linguist for Mr. Binalshibh indefinitely and

1 without the possibility of appeal.
2 Your Honor, could I digress for a moment and say the
3 interpreters usually like to give me a hard time via this
4 little box here, but I notice that its operations is
5 restricted. The interpreter says go. Excellent. Thank you.
6 They give me a hard time in the most loving way. I didn't
7 mean that in any bad way.
8 But these events which occurred after the 16 June
9 argument illustrate, I think, the fundamental flaw in the
10 Special Litigation Team's position, and the fundamental flaw
11 is that the FBI investigation can be administratively closed.
12 It can be over in every -- in every possible sense of the
13 word, but its effects still continues.
14 MJ [COL POHL]: If the investigation is closed, as you
15 said, in every sense of the word ----
16 LDC [MR. CONNELL]: Which we don't know, but assume for
17 the sake of argument yes.
18 MJ [COL POHL]: That's your words.
19 LDC [MR. CONNELL]: Yes. I am clarifying that I am using
20 it for the sake of argument.
21 MJ [COL POHL]: Okay. If it's closed and there is no
22 investigation, what do you want from them?
23 LDC [MR. CONNELL]: Well, the two things that we identify

1 in 292D as supplemented, 292U and now 292VV, which we will
2 supplement ourselves, and 292L. And so the relief that we are
3 requesting for is information about what happened so that we
4 can mitigate its effects and advice of independent counsel so
5 we can comply with Model Rule 1.7. I will address those in
6 more detail, but I wanted to answer your question
7 specifically.
8 MJ [COL POHL]: Go ahead.
9 LDC [MR. CONNELL]: In June I described some of the
10 effects of the investigation on my personal conduct in the
11 case. One of those items was my travels to the Middle East
12 with the linguist for Mr. Mohammad who had been interviewed as
13 part of a joint investigation. One of those was my team
14 participated in a joint investigation with the Binalshibh
15 team. My investigator and Mr. Cruz traveled to a western
16 country to investigate a witness who is mentioned prominently
17 in the discovery from the prosecution in this case -- I am
18 slowing down -- and I have declined to use an unclassified
19 communication which I would otherwise be entitled to use under
20 AE 018U, the written communications order in the case.
21 None of these facts about Mr. al Baluchi and his team
22 appeared in AE 292QQ. That might be because the military
23 commission considered them unimportant. I suggest they are

1 important, factually dispositive in fact, and should not be
2 overlooked.
3 It is true we did not introduce any testimony on
4 these matters, but that is because we don't have subpoena
5 power. And in 292D we asked for the witnesses who could
6 verify these facts to be produced, a request which was
7 declined.
8 Now, it's not as severe as what has happened to the
9 Binalshibh team since 16 June. Losing two additional members
10 of their team is very severe indeed. But the effects of this
11 investigation and this conflict continue in three ways.
12 The first is that prior to June 16 -- 16 June of
13 2014, we had planned a trip to the same western country, with
14 respect to the same witness mentioned prominently in the
15 prosecution discovery, but Mr. al Baluchi required us to
16 cancel for two reasons. The first is we don't know what
17 information Mr. Cruz revealed about the earlier trip; and
18 second, because Mr. al Baluchi doesn't know whether he can
19 trust my judgment in protecting his confidentiality, which is
20 the point that I tried to make fundamentally in June.
21 The second continuing effect is that I have a trip
22 planned to the Middle East -- back to the Middle East in
23 September, and I had wanted to travel with the same Mohammad

1 linguist who had formed a relationship with the witnesses
2 there, but we can't use that linguist anymore because of
3 uncertainty over what happened in the investigation of that
4 linguist.
5 And the third continuing effect is a continuing
6 controversy over my personal interests, whether I will trigger
7 a new investigation or reopen an investigation or an
8 investigation by an agency relying on the earlier FBI
9 investigation if I exercise Mr. al Baluchi's communication
10 rights under AE 013DDD, the Protective Order Number 1, and AE
11 018U, the written communications order.
12 So in June I proposed a path forward, and I would
13 like to mention that again, and I would like to tweak it just
14 a little bit maybe to make it a little bit more palatable.
15 But the issue personally under Model Rule 1.7 and its analogs
16 in the states of which I belong to the bar, is there a
17 significant risk that the representation will be materially
18 limited by a personal interest of the lawyer, and it seems to
19 me the military commission asked earlier what do I want from
20 them, and there are two things that I want.
21 The first is that -- is the discovery as requested in
22 292D as supplemented, which would allow me to form a
23 reasonable belief of competent and diligent representation

1 under Rule 1.7(b)(1), and second would allow informed consent
2 by my client under Rule 1.7(b)(3).
3 Now, the special litigations team's position at the
4 prior hearing, which has developed some since that time, or
5 maybe been developed in the same direction but more, was that
6 they would not provide discovery to litigate the conflict, but
7 that we should request discovery to litigate sort of the
8 historical question of interference with the defense function.
9 And at that time they took the position that providing such
10 discovery was outside of their detailing mandate, but I notice
11 that -- I don't even think it has been accepted for filing
12 yet, but just filed was AE 003F, a document dated 24 July,
13 which expanded the mandate of the Special Litigation Team to
14 include not just items in the 292 series, but any issues
15 arising out of the FBI investigation. So that problem has
16 been solved.
17 So taking them at their word, I requested -- and I
18 know that Mr. Mohammad did as well, but we requested the
19 discovery of the historical interference with the client, with
20 the defense functions, and I will shortly file a supplement to
21 AE 292VV, which will contain our correspondence with the
22 Special Litigation Team on that point.
23 But suffice it to say that they essentially take the

1 position that they will not provide discovery to counsel with
2 a possible conflict. And that brings me to my second point,
3 which is what I am asking for, which is what was originally
4 briefed in 292L, which is that the provision of independent
5 counsel to discuss the issue with Mr. al Baluchi and allow
6 informed consent by him to a possible conflict.
7 Following the last hearing on June 19 -- 19 June
8 2014 -- we directly requested the Chief Defense Counsel to
9 detail independent counsel to advise Mr. al Baluchi on this
10 possible conflict. As I mentioned in June, we had already
11 identified a candidate who had previously held the appropriate
12 program access, who already has an attorney-client
13 relationship with Mr. al Baluchi, and this provides a solution
14 to the ongoing problem that the Special Litigation Team has
15 either identified or created, depending upon how you look at
16 it. And that's if the Special Litigation Team will not
17 provide discovery about the historical invasion of the defense
18 function to counsel, who themselves have a possible conflict,
19 the provision of independent counsel can solve that problem in
20 one of two ways.
21 First, if there is a waiver or Mr. al Baluchi decides
22 that there is no conflict or -- or there is no ethical issue
23 not addressed in 292QQ, then I can declare, "I have no

1 conflict" and "please give me the discovery" or the discovery
2 could be provided directly to that independent counsel,
3 especially if it relates to the question that they are being
4 advised about.
5 Now, correspondence with Special Litigation Team. I
6 do want to mention one thing that the military commission
7 inquired of me last time, which was the question of privilege,
8 and I want to repeat our position that if there is privileged
9 material of a party which is contained within the material,
10 that party, either through their regular counsel or their
11 independent counsel, should have -- should receive the
12 discovery first, have the opportunity to assert any privilege
13 that they may have. So I don't want it to be thought that I
14 am trying to invade someone else's privilege by making this
15 request.
16 And here is the tweak that I want to make. So the
17 chief defense counsel has advised me that she cannot act
18 without a court order on this because it involves things which
19 are outside her ability to order on her own initiative.
20 MJ [COL POHL]: As I recall when we discussed this in
21 June, you told me it was a funding issue.
22 LDC [MR. CONNELL]: Yes.
23 MJ [COL POHL]: That ----

1 LDC [MR. CONNELL]: There are really two pieces to the
2 issue, it's a funding issue and an access-to-Guantanamo issue.
3 MJ [COL POHL]: And I understand how that could be, but at
4 the end of the day is what the Chief Defense Counsel chooses
5 to do or chooses not to do, that's what -- that's her call,
6 but I'm not going to appoint an independent counsel unless I
7 think one is necessary. And so just to make it clear, because
8 I'm not sure I was clear the last time, I am not going to say
9 I am going to appoint independent counsel just to make it
10 easier to pay unless I believe -- for me the pay issue is a
11 nonissue. It may be an issue to Colonel Mayberry, but it's
12 not to me. If I think you need an independent counsel, I will
13 order one. If I don't think so, I won't. The fact that she
14 says she can't do it, that's of no mind to me.
15 LDC [MR. CONNELL]: Right, and I'm glad that the military
16 commission mentions that. It's not that I thought that you,
17 you know, begrudged the fiscal authority or something like
18 that. But that's, in fact, my proposed tweak to the relief
19 that I am requesting, which is that it should be a
20 discretionary matter for the Chief Defense Counsel. The Chief
21 Defense Counsel should be able to grant my request as she sees
22 fit under -- in the exercise of her discretion. Her position
23 is she has no discretion because she does not have the

1 authority.
2 So my tweak is not to ask -- not to make a finding
3 that independent counsel is 100 percent necessary, because I
4 understand that could have ramifications for the military
5 commission's position on other matters. My proposed
6 solution -- my proposed path forward on this question is that
7 the military commission issue an order to the convening
8 authority authorizing the Chief Defense Counsel to appoint
9 independent counsel if she in her -- in the exercise of her
10 regulatory duties considers it to be appropriate. So to take
11 out the ----
12 MJ [COL POHL]: But you want me to do that in a vacuum. I
13 have no idea why she has a position that she can't appoint an
14 independent counsel to assist in these cases. I mean, there
15 is counsel appointed continually in these cases, detailed
16 counsel, and quite frankly it's difficult for me to envision
17 why this would be any different. Obviously she has a
18 different view, but I don't know what her authority -- excuse
19 me, I don't know what her source of authority is that says she
20 can't appoint this. It strikes to me is -- I just don't know.
21 So you want me to go to the convening authority and
22 say, oh, by the way, tell her to do this when I don't know why
23 she says she can't do it.

1 LDC [MR. CONNELL]: Right.
2 MJ [COL POHL]: Is there fiscal is reasons? Is there
3 statutory reason? Is it her personal reason? I don't know.
4 Now to resolve that I'm going to start litigating with Colonel
5 Mayberry as to what her authority is to appoint independent
6 counsel or not?
7 LDC [MR. CONNELL]: So two thoughts about that,
8 Your Honor. The first one is I do want to be clear that I am
9 not asking you to order the convening authority to order
10 independent counsel. You may have just used that for a
11 shorthand. But what I am asking instead as an alternative
12 here ----
13 MJ [COL POHL]: You are telling me to order the convening
14 authority to tell the chief defense counsel that she has
15 certain authority.
16 LDC [MR. CONNELL]: Yes.
17 MJ [COL POHL]: When I have no idea why she thinks she
18 doesn't have that authority now.
19 LDC [MR. CONNELL]: Which brings us to number two. That's
20 a vacuum we can solve, Your Honor. And if you will give me a
21 week I will request a statement of position from the Chief
22 Defense Counsel on that, and then we will answer those
23 questions.

1 MJ [COL POHL]: If you wish to do that, you may.
2 LDC [MR. CONNELL]: Thank you.
3 MJ [COL POHL]: And I will give it the consideration I
4 think it deserves.
5 LDC [MR. CONNELL]: As you always do, Your Honor. But
6 it's a legitimate question, and I recognize that the record is
7 not all it could be on that point, and so I will -- I will
8 supplement the record and fill that vacuum.
9 MJ [COL POHL]: Okay. Go ahead.
10 LDC [MR. CONNELL]: I don't have anything else.
11 MJ [COL POHL]: Okay. Thank you.
12 LDC [MR. CONNELL]: Thank you.
13 MJ [COL POHL]: Ms. Bormann, do you wish to be heard on
14 this?
15 LDC [MS. BORMANN]: I understand that the Special
16 Litigation Team has waived their filing of their brief, the
17 timing of this, so I am asking the commission, the
18 commission's position on whether or not special litigation
19 counsel will be allowed to argue despite not having filed
20 briefs.
21 MJ [COL POHL]: They have indicated to me that they wished
22 to, so I am assuming that they do; is that correct?
23 STC [MR. CAMPOAMOR-SANCHEZ]: Yes, that is our intention.

1 LDC [MS. BORMANN]: And what I am going to be asking to do
2 is to be able to argue after they do because in a litigation
3 situation, I would have advanced notice of what they are going
4 to be arguing, and normally -- and I understand the commission
5 wants to push this through, but normally I would be asking
6 that they be barred from arguing because we have not yet been
7 able to reply to them in writing. There's no reason ----
8 MJ [COL POHL]: But there is no requirement that they file
9 a written response.
10 LDC [MS. BORMANN]: Obviously.
11 MJ [COL POHL]: And if your question is would you get a
12 chance to have a rebuttal argument after they argue, the
13 answer to that is yes.
14 LDC [MS. BORMANN]: And I just want to correct the record.
15 Of course there is no requirement that they file a written
16 response, but under normal -- my normal position would be that
17 when a party chooses not to file a written response, I would
18 be asking that they be barred from arguing.
19 MJ [COL POHL]: Okay.
20 LDC [MS. BORMANN]: But in this case I understand the
21 commission wants to go forward, and so what instead I ask is
22 that I be able to argue after they do.
23 MJ [COL POHL]: Granted.

1 Mr. Harrington, do you wish to be heard at this time?
2 LDC [MR. HARRINGTON]: Briefly, Judge. We are in a
3 position where I am not comfortable with going ahead with any
4 argument with respect to these two issues that you talked
5 about until we file our response to the motion for
6 reconsideration. There is additional information that needs
7 to go into that motion for reconsideration which I think it is
8 better done in writing for the court to consider, and it will
9 impact on what you just heard.
10 MJ [COL POHL]: Okay. Thank you. Trial Counsel?
11 STC [MR. DRISCOLL]: Good morning, Your Honor.
12 MJ [COL POHL]: Good morning.
13 STC [MR. DRISCOLL]: The Special Review Team submits that
14 the commission's ruling that there is no actual conflict with
15 respect to four of the five defense teams is correct and
16 should not be disturbed.
17 Indeed, we submit that all facts necessary to resolve
18 the conflicts issue as to these four teams -- and indeed as we
19 argue in 292RR, which we understand will be heard at a later
20 date, all facts necessary to resolve that issue are in the
21 record to resolve that issue as a matter of law. Indeed, the
22 only relevant facts are already in the record, and those
23 facts, which as I will argue later, are essentially

1 undisputed, point to only one conclusion, that there is no
2 conflict of interest. Accordingly, we believe the commission
3 should leave in place or leave undisturbed those portions of
4 292QQ that found no conflict with respect to four of the five
5 defense teams.
6 As the commission correctly noted in 292QQ, there are
7 only three factual bases currently in the record that could --
8 that have been alleged to be a source of a potential conflict:
9 The FBI preliminary investigation into a nonattorney member of
10 the Binalshibh team, the FBI full investigation of a
11 nonattorney member of Mr. Mohammad's team, and, which we won't
12 get into today, the third one being the 24 June meeting
13 between Mr. Harrington, Mr. Bogucki and a Defense Department
14 employee.
15 I'm going to focus today on the first two because
16 those are the only ones that pertain to the remaining defense
17 teams. And with respect to those two FBI investigations, the
18 commission correctly concluded that they cannot, as a legal
19 matter, give rise to an actual or potential conflict. As I
20 said, those investigations concerned nonattorney members of
21 the two defense teams, and we recognize Your Honor found the
22 distinction between attorney and nonattorney was, in your
23 view, not persuasive. That said, that's not the most salient

1 point here. The most salient point is that those
2 investigations are closed and they have been closed now for
3 some time.
4 Furthermore, the government went further to provide
5 greater assurance to this court and to defense counsel by
6 performing extensive searches of FBI holdings, and after those
7 searches we were able to inform the court and defense counsel
8 that there is no investigation of any defense team member, nor
9 are there any so-called poison pills or moles in the defense
10 camp, as Mr. Nevin argued or speculated.
11 Finally, given that, we believe this commission
12 correctly stated that the SRT was correct in pointing out the
13 proposition that if there is no investigation, there is no
14 conflict, certainly as regards the four defense teams with
15 which Your Honor felt comfortable ruling in QQ that there was
16 no conflict.
17 The case law provides ample support, and I didn't
18 hear any case law from defense counsel arguing a contrary
19 position. Lafuente, Moss and Montana all stand for the
20 proposition that if there is no investigation, there is no
21 conflict of interest and the claim necessarily fails. Thus,
22 it's the SRT's position that there is no additional factual
23 development necessary, certainly not as to these four defense

1 teams -- or three, rather. I recognize that Mr. Hawsawi has
2 removed himself from this dispute -- let alone the appointment
3 of an independent counsel in order to resolve the conflict
4 claim.
5 Indeed, the historical inquiry that counsel are
6 requesting into the scope and nature of investigations that
7 are now closed is, as a legal matter, utterly irrelevant to
8 the conflict inquiry. The fact that the investigations are
9 closed and that there are no other investigations or sources
10 is the only relevant fact for this court's consideration of
11 the conflict issue.
12 As we have said repeatedly, and we have had
13 discussions with counsel about this, they may be relevant to
14 some other claim, and counsel has gone ahead and filed
15 something in 292VV addressing that, but they are, as a matter
16 of law, not relevant to the conflict inquiry that this court
17 has undertaken.
18 Because the case is closed and because there are no
19 other investigations, all that remains of the conflict claim
20 is a speculative fear of investigation. But as Your Honor
21 said in his order, and I couldn't say it better, the fear of
22 missteping -- this is at 292QQ at 25, 26. The fear of
23 misstepping while possibly misunderstanding in a lay sense

1 does not create a legal basis for conflict, and the choice is
2 made by counsel in representing their clients. A fear of what
3 might occur does not create an actual conflict since what does
4 occur is within the control of counsel, and I believe that is
5 an accurate statement of the law since every court that has
6 looked at this issue has held that a subjective fear of
7 investigation without more is insufficient to make out a
8 conflict claim. And I would cite the court to
9 Harrison v. Motley, Moss and Montana, which Your Honor quoted
10 in 292QQ that there lacks any controlling legal authority to
11 support the proposition that an attorney's fear of
12 investigation may give rise to a conflict of interest.
13 And while counsel claim that they have pulled punches
14 as a result of their fear of investigation, as Your Honor
15 noted, that is within the control of counsel. They have
16 received the assurance, I might add, that the counsel and the
17 cases that are reported never received. They are receiving,
18 in real time, an affirmative representation from the
19 government that they are not under investigation.
20 I would like to, if I could, address a couple of the
21 points raised by counsel in their argument this morning and
22 addressed by Your Honor. First, to the extent there is some
23 concern about the limitations in the FBI declarations about

1 how the declarations do not recite all the known knowledge of
2 the defense, of the declarants, I would note as we did in
3 292RR, and these experienced defense counsel who have seen
4 many a search warrant in their day will recognize that
5 language.
6 That language is merely noted to inform the court
7 that the agents have not recited the full scope of their
8 knowledge, but it's not intended as a substantive limitation.
9 Indeed, all of the material information regarding those
10 investigations and their knowledge is included in the
11 declaration.
12 Mr. Nevin said that the FBI investigation was
13 transferred to the Department of Justice. That's inaccurate.
14 No investigation was transferred. As we said at the June
15 hearing and as we have said in our papers, the matter was
16 referred to the Department of Defense for whatever action they
17 may take given that they held the security clearance of the
18 individual at issue.
19 Finally, the FBI poison pill that Mr. Nevin regarded,
20 that's not just speculation, Your Honor, that's speculation
21 that flies directly in the face of the undisputed facts in
22 this record. If there was some source in the defense camp,
23 the FBI searches would have turned that up. There was no such

1 source, there is no such source. So speculation about a
2 poison pill or a source or a wolf circling in the camp is not
3 bound in the facts, it is not based in the facts.
4 I would agree to the extent it's beyond the scope of
5 our appointment that the classification issue creates a
6 conundrum, but it's a conundrum that the court need not
7 address, because for -- the simple reason is there is not a
8 conflict here, so therefore there does not need to be any
9 additional factual inquiry.
10 And the condition raised by Mr. Connell about how to
11 go about appointing independent counsel, you appoint
12 independent counsel when Your Honor finds there is a conflict.
13 This sort of precautionary appointment of independent counsel
14 is not required by law and, indeed, it's not how this is
15 supposed to work.
16 So with respect, we believe that counsel have
17 received all the factual assurances and the facts that are in
18 the record are sufficient for Your Honor to do as he did and
19 find with respect to four of the five defense teams that there
20 is no conflict, and we think that portion of AE 292QQ should
21 be undisturbed. And we will argue that at a later date with
22 respect to Mr. Binalshibh that that portion of the order
23 should be reconsidered and this case should be moved forward

1 past the 292 series.
2 Thank you, Your Honor.
3 MJ [COL POHL]: Thank you. Whichever order defense would
4 like to be heard. Ms. Bormann, would you like to be heard now
5 or would you ----
6 LDC [MS. BORMANN]: I have nothing based on that.
7 MJ [COL POHL]: Mr. Nevin?
8 LDC [MR. NEVIN]: Your Honor, everything Mr. Campoamor
9 just said applies to Mr. Binalshibh as well ----
10 MJ [COL POHL]: Excuse me. I believe it was Mr. Driscoll.
11 LDC [MR. NEVIN]: My apologies. I thought it was
12 Mr. Campoamor.
13 MJ [COL POHL]: That's okay.
14 LDC [MR. NEVIN]: My bad. I apologize for that.
15 But everything contained in that argument was also
16 true about Mr. Binalshibh, and yet the court found that
17 further inquiry was necessary. And I think where I maybe end
18 back at the beginning of this argument was to say it's the
19 same situation for us by virtue of the scope of the
20 investigation and by virtue of that we know not from the
21 statement of the FBI agents about their interpretation of what
22 the investigation was about or what was in some purpose
23 statement that was drafted at -- back at the office, but

1 rather what the agents were doing on the ground. They were
2 making inquiries, and that's -- that has never been denied or
3 rebutted or in any way taken out of the record. They were
4 inquiring about our team as well as the other teams, and so
5 the same situation -- the same result that occurred with
6 Mr. Binalshibh should occur here as well.
7 Counsel made the point that the FBI investigation is
8 now closed and that's the end of the matter, and I will
9 simply -- and the reference to Lafuente was made, and all I
10 can say again is that that is not what Lafuente says. On the
11 contrary, Lafuente says that in order for them to have
12 completed the record in that case, the lawyer was going to
13 need to provide an affidavit stating whether or not she feared
14 prosecution.
15 And, again, this is a situation -- Lafuente is a
16 situation where the parties are looking back after there has
17 been a conviction and they are looking back and counsel -- a
18 determination is being made after the fact that counsel was,
19 was under investigation at that time, but didn't know it.
20 So you have -- and that is the typical habeas or
21 post-conviction posture, is that things happened in the past
22 and we are now judging them. But, you know, here we are on
23 the ground, so, you know -- in other words in Lafuente the

1 investigation never came to light until later, until post --
2 until the time of post-conviction relief, and so then in that
3 situation if there were no investigation, if there wasn't an
4 investigation -- there would only be two possibilities: There
5 was an investigation or there wasn't. And if there was an
6 investigation and counsel didn't know about it, then it
7 wouldn't have affected counsel. And if there wasn't an
8 investigation, and if counsel didn't fear that there was an
9 investigation, obviously there would be no issue.
10 So the point, what Lafuente says is this, "The
11 government could obviate the need for an evidentiary hearing
12 by simply confirming through an affidavit that Gambino," the
13 lawyer, "was never under investigation." That's the point
14 that special trial counsel makes, but there is a semicolon
15 there, not a period, and what comes after the semicolon is,
16 "an affidavit from Gambino would confirm whether she feared
17 prosecution." The circuit is saying clearly either the
18 presence of an investigation or the fear of an investigation
19 could give rise to a conflict of interest.
20 And this is a case that both parties cited. I would
21 be happy to put it in the record or even give the court or the
22 military commission a copy, my copy of this, although I
23 know ----

1 MJ [COL POHL]: That won't be necessary.
2 LDC [MR. NEVIN]: Yeah, but it keeps -- the special trial
3 counsel keeps articulating the proposition as if it were
4 clearly established that fear couldn't give rise to a
5 conflict.
6 MJ [COL POHL]: Mr. Nevin, let me ask you this: If a
7 defense counsel has a fear of an investigation ----
8 LDC [MR. NEVIN]: Right.
9 MJ [COL POHL]: Okay. And you referenced the
10 Lynne Stewart case before and how that is in your mind at
11 least whenever we are dealing with these kind of cases.
12 LDC [MR. NEVIN]: Yes.
13 MJ [COL POHL]: If a defense counsel has a fear of an
14 investigation and there is no investigation, does the defense
15 counsel then have responsibility to withdraw from the case
16 because of a subjective fear?
17 LDC [MR. NEVIN]: Well, I suppose ----
18 MJ [COL POHL]: My question is the next step.
19 LDC [MR. NEVIN]: I understand. And I suppose
20 theoretically defense counsel could be suffering from paranoid
21 schizophrenia and could be, you know, afraid of something that
22 wasn't real, and then possibly defense counsel should withdraw
23 for other reasons, but ----

1 MJ [COL POHL]: No, let's not -- I am not saying that.
2 What I am saying is the scenario of -- of there is no
3 investigation or an investigation has been closed -- whatever
4 term you want. Let's say there is no investigation.
5 LDC [MR. NEVIN]: There are two different ----
6 MJ [COL POHL]: Okay. Let's say there is no investigation
7 but there is the fear of an investigation ----
8 LDC [MR. NEVIN]: Right.
9 MJ [COL POHL]: ---- or, you know, what is the next step
10 for -- you say this creates a conflict. My question is: What
11 is the next step, then? Does the defense counsel then have a
12 duty to withdraw because you have got -- or what? I mean, it
13 strikes to me is this -- it's unclear to me what the next step
14 would be.
15 LDC [MR. NEVIN]: Well, I think defense counsel has an
16 obligation to do exactly what we are doing, which is to come
17 to the court or to the military commission and say conduct --
18 see Holloway, conduct a thorough inquiry.
19 MJ [COL POHL]: But if a court does, and we are not going
20 to say -- I don't want to make it specific to this case. The
21 court conducts any inquiry that it deems appropriate and
22 concludes there is no conflict, but the defense counsel says
23 judge, I hear what you are saying, but I don't agree, I am

1 still afraid of one.
2 LDC [MR. NEVIN]: Yeah.
3 MJ [COL POHL]: Where do we go from there then?
4 LDC [MR. NEVIN]: Obviously, and this is a point we made
5 before, is that counsel have an independent ethical obligation
6 to decide whether they can go forward.
7 MJ [COL POHL]: But in some ways isn't that where we are
8 at currently?
9 LDC [MR. NEVIN]: Well ----
10 MJ [COL POHL]: I mean, you are asking me to reconsider
11 it, I got that, but I am saying currently as of 24 July I made
12 a ruling on this, and you want me to reconsider the ruling. I
13 got that. But let's say we go down, I reconsider and I adhere
14 to my previous ruling, we are still at the exact same spot of
15 the court has made a determination there is no conflict, but
16 you subjectively may still fear an investigation, and my
17 question is: If we reach that point, what's the next step?
18 LDC [MR. NEVIN]: Well, this is why I made the point about
19 being paranoid. At some point I think when you have -- when
20 the military commission has provided counsel with information
21 to indicate what the purpose of the investigation was, what
22 was going on, why was this drastic action taken, and if it
23 would satisfy a reasonable person that there was no reason to

1 be concerned, then I think -- if I am still concerned, then
2 I'm being unreasonable. But at this point I don't have any
3 information.
4 MJ [COL POHL]: No, but my point is this, is eventually
5 there is going to be a decision made -- one was made that you
6 asked me to reconsider, okay, but that's a decision by the
7 commission.
8 LDC [MR. NEVIN]: Yes.
9 MJ [COL POHL]: Okay. Okay. Now, you may not like it,
10 you may disagree with it, whatever. You may say that the
11 inquiry wasn't thorough enough, whatever, okay. But you have
12 a judicial ruling that there is no conflict, okay. Then but
13 you think, well, I disagree, Judge, I'm still afraid of one.
14 Okay, let's assume -- then what? Does the defense counsel
15 then decide for him or herself whether or not there is a
16 conflict?
17 Because the way you are telling me -- what I am
18 hearing you tell me is that you decide and you make these
19 decisions of whether or not there is a conflict regardless of
20 what necessarily the court holds, and then -- then you make
21 the -- do you see?
22 LDC [MR. NEVIN]: Yes, sir.
23 MJ [COL POHL]: Because you keep saying we don't have

1 enough information.
2 LDC [MR. NEVIN]: Yes.
3 MJ [COL POHL]: Well, the "enough information" is
4 determined by the decision-maker, by me. If I think there is
5 enough information to decide, I make a decision. You say,
6 well, I need more information. So then where are we at then?
7 LDC [MR. NEVIN]: Well, this is a point that the cases
8 make and that I have made and that is implicit and explicit in
9 the rules of professional conduct, is I can't go forward if I
10 think I have a conflict of interest or if I am -- if my
11 perception of the situation is such that I believe I have a
12 conflict of interest.
13 And so I'm here saying to you you haven't given me
14 any information. The government hasn't given me any
15 information. I'm in the position of having had something
16 happen that has never happened in 35 years of practicing law.
17 It is an extremely extraordinary and singular thing that the
18 FBI tries to invade my defense camp, and it's astonishing to
19 me, and I have no idea about why they did it.
20 And I don't know -- I don't think that the military
21 commission does either, because the military commission was
22 provided some materials in secret by the special trial
23 counsel, but you stated that you weren't going to rely on that

1 material, so I don't think you have the information either.
2 Why -- what were they doing? Why were they doing
3 that? And when we find out about it as a result of the
4 military commission issuing its order, they dust their hands
5 off and say nothing to see here, this investigation is all
6 finished, nothing to worry about here. And the military
7 commission says fine, that's good enough, because if there is
8 no investigation then there is nothing to worry about.
9 And I have made the point that if you are talking
10 about years after the fact looking back and saying, just as
11 you did, Mr. Nevin, you didn't know about the investigation of
12 your linguist during that 17-month period, so it can't have
13 affected you, I understand that's the posture of most of these
14 cases, is you are looking back, you didn't know there was an
15 investigation, you didn't do anything different because there
16 was an investigation because you didn't know about it; or
17 there wasn't an investigation, in which case the investigation
18 cannot have affected you.
19 But here we know there was an investigation, and,
20 again, Lafuente says, "We note that a full evidentiary hearing
21 is not the only option available to the district court to
22 resolve the essential disputed facts whether Gambino was
23 actually investigated by the U.S. Attorney's Office or whether

1 she feared such an investigation." Lafuente specifically says
2 if you are afraid, that creates a conflict, and the only way
3 you can dispel the conflict is to say there was no fear and
4 there was no investigation. But really ----
5 MJ [COL POHL]: So if you have a fear -- if you have a
6 fear then there is a conflict?
7 LDC [MR. NEVIN]: Well ----
8 MJ [COL POHL]: That's what you just told me.
9 LDC [MR. NEVIN]: Yes. If I have a fear, there is a
10 potential conflict. And this is why I used the example about
11 the person being paranoid. If I am telling you something
12 unreasonable, Your Honor, the sun came up in the east this
13 morning, I think I have a conflict, I think the government is
14 out to get me, then I think you are -- anyone would be in a
15 position to stand back and say, Mr. Nevin, that's not
16 reasonable, and maybe you shouldn't be the lawyer for other
17 reasons other than a conflict.
18 But that's not what I am telling you. I'm telling
19 you this completely unprecedented event has occurred in the
20 course of this case, and we have no explanation for why it
21 was. And I have told you about the other things that have
22 occurred in this case and the way that counsel have been
23 targeted again and again and again by the government, and I'm

1 telling you enough. It's not right for us to live in -- under
2 this cloud of suspicion. And the remedy for it is not to --
3 the remedy for it is not -- I am not saying anything other
4 than please give me the information. That's all. Give me the
5 information so I can make this decision.
6 Does the military commission have the information
7 about what -- has it relied on the information about what
8 the -- about what the investigation was? No. The military
9 commission doesn't know that either. So would I be willing to
10 take the military commission's word for it? I mean, you sort
11 of were phrasing the question in that way or getting at that.
12 It would depend on what the military commission told me about
13 it, but at this point the military commission doesn't have the
14 information either and hasn't relied on it in making its
15 decision.
16 So we are all in the dark about why these crazy
17 things happened and what they mean for the degree to which we
18 are under scrutiny, and the only way to get at that -- says
19 Holloway and the other cases -- is we conduct a thorough
20 inquiry. And the military commission could do that, or we
21 could simply hold a hearing. We could simply have an
22 evidentiary hearing in which we bring witnesses here and
23 examine them here or do it via depositions. It doesn't have

1 to be the military commission that is out pounding the
2 pavement on this, but -- but we need the information.
3 And the cases don't say what counsel claims that they
4 said. They don't say the absence of an investigation, period;
5 there therefore can never be a conflict. It's not that
6 simple.
7 I just will return briefly and then I will sit down
8 to -- but first two things. Again, no mention of 018Y, no
9 mention of the implications of that, an issue that's still
10 floating around out there unresolved, and I understand the
11 scheduling issues, but that's why I asked, you know, to
12 please, as soon as we get to a lineup of motions that we can
13 argue, I ask that that be at the top of the list.
14 MJ [COL POHL]: But you certainly understand that your
15 position all along has been 292 has to be resolved before
16 anything else.
17 LDC [MR. NEVIN]: Absolutely. I am not complaining about
18 it. I am just ----
19 MJ [COL POHL]: Commenting on it.
20 LDC [MR. NEVIN]: I'm commenting on it, yes. And I am not
21 asking you to rule one way or the other with respect to 018Y,
22 but I would appreciate it if the military commission would
23 realize the pendency of these kind of allegations against us

1 that has an impact on whether or not we fear the government
2 investigation also. And there is no reference to it in 292QQ,
3 and there has been no reference to it in counsel's discussion
4 so far.
5 And there was a representation about the FBI having
6 said they had checked everyone and that there was no one on
7 any defense team who was being investigated, and let me just
8 speak to that briefly and then I will sit down.
9 First, that's not what the FBI Special Agent said.
10 He said we can't do a search unless we know the names of all
11 of the people on the defense teams and unless we have their
12 PII sufficient to allow us to query our database, and we don't
13 have that information.
14 Now, maybe there has been a subsequent declaration
15 that I am not aware of, but that's -- my recollection of the
16 last declaration was that they didn't know our names and they
17 didn't know our birth dates and so they therefore couldn't
18 search the databases.
19 But there is another problem that floats around and
20 that is that, you know, the very real possibility that there
21 is some sort of -- the military commission mentioned this
22 issue of classification. I don't know whether, when these
23 databases get queried and you touch on something that is --

1 that lives at a classification level that maybe is above the
2 one that the agent who is conducting the inquiry is authorized
3 for, whether the computer just says nothing here, nothing here
4 for you to be concerned about.
5 That issue is -- in fact, I think is likely, that if
6 there were an investigation going on, that the people who were
7 making the inquiry would not -- might well not have had
8 authority to find out about it because it may have existed in
9 a separate intelligence track.
10 Just take, for example, this, an issue that's never
11 been resolved: We made the point that Ms. Baltes, at the time
12 all this arose and at the time all this was going on, was both
13 General Martins' national security lawyer and Chief of Staff
14 to the Deputy Director of the FBI. So the military commission
15 made reference to the walling-off, but no reference to
16 Ms. Baltes' dual role, and, of course, denied our request to
17 question her or submit questions about her knowledge, and
18 that's another area in which the record is incomplete.
19 So again, sunshine is the resolution of this
20 problem -- is letting us have the information that would allow
21 us to fulfill our duty, ethical duty, and that would allow
22 Mr. Mohammad to satisfy his right to be assured that he should
23 waive any conflict which exists. That's my argument.

1 MJ [COL POHL]: Thank you.
2 LDC [MR. NEVIN]: Thank you, Your Honor.
3 MJ [COL POHL]: Mr. Connell?
4 LDC [MR. CONNELL]: Thank you, Your Honor.
5 Your Honor, I suggest that the difference between the
6 parties on this matter is fundamentally the question of
7 whether history matters. Mr. al Baluchi, like other people,
8 come to this question of the investigation of their lawyers
9 and their written communications after years of CIA custody,
10 years of isolation and sometimes neglect by defense counsel at
11 Guantanamo Bay. And the military commission comes to this
12 with history, history of the reading of the legal mail, the
13 listening devices, the data breach, the CI on the defense
14 team, the accusations of written communications.
15 It is the fundamental prosecution position that it
16 only matters if there is an investigation at the time the
17 argument is occurring, essentially means that they can
18 investigate us and assault our both ethical duties and
19 attorney-client relationship in odd-numbered months as long as
20 they close it and wrap it up by even-numbered months. That
21 didn't even work out for them, they forgot to close it by the
22 even-numbered month of April because that's when the initial
23 problem occurred.

1 But those historical questions matter in the same way
2 that the investigation which has been closed by the FBI and
3 continued by the -- excuse me, not transferred, but referred
4 is counsel's point to the DoD in July -- excuse me, in June
5 with its effects in July continues to have effects on the
6 defense team. And it is not a matter of speculation. I have
7 tried to be as specific as I can consistent with operational
8 security and client confidentiality of the sort of effects
9 that it's having on me as an individual and as a professional
10 individual.
11 The -- I want to mention again the -- something I
12 just referred to about counsel's argument about the FBI didn't
13 transfer the investigation to the DoD in June. They referred
14 the investigation to the -- from the FBI to the DoD in June.
15 Now, I'm sure in some bureaucratic circles that is a
16 distinction which makes an enormous difference, but to those
17 of us who are on the ground and in the trenches, it is a
18 difference which contains no distinction whatsoever.
19 The ongoing pressure on our professional duties
20 requires that this military commission take a realistic
21 approach which takes history into account and not simply a
22 snapshot of is there an investigation at the time that the
23 particular counsel happens to be speaking.

1 Thank you.
2 MJ [COL POHL]: Thank you.
3 Mr. Harrington, anything?
4 LDC [MR. HARRINGTON]: No, Your Honor.
5 MJ [COL POHL]: Trial Counsel?
6 STC [MR. DRISCOLL]: Just briefly, Your Honor. On the
7 point of Lafuente, counsel keep going back and forth on this
8 issue, but Mr. Nevin stated that the test in Lafuente was
9 conjunctive, that there had to be no investigation and no
10 fear. He added that word "and." There is no such conjunctive
11 test.
12 The posture in Lafuente is it was under dispute
13 whether the defense counsel, Ms. Gambino, was under
14 investigation. Therefore, the Seventh Circuit held there are
15 two ways to resolve this. You can either file an affidavit
16 saying no investigation of defense counsel, or you can file an
17 affidavit from Ms. Gambino saying she didn't fear she was
18 under investigation. Either one of those will be sufficient
19 to obviate the conflict.
20 In this case we have given, in real time, the
21 assurance to counsel that there is no investigation and,
22 indeed, counsel was never the subject of an FBI investigation,
23 that counsel in Gambino never got. So Mr. Nevin is correct

1 that there is two scenarios here: Either there was an
2 investigation and he didn't know about it, which is the
3 17-month period Your Honor referenced, or he was not the
4 subject of the investigation, which is what we have
5 represented here.
6 And this point that Mr. Connell makes about a
7 bureaucratic distinction between transferring an investigation
8 and referring an investigation, the key word there is
9 "investigation." There is no investigation referred,
10 transferred. Merely information was provided to the DoD
11 because DoD held the security clearance of the individual in
12 question. The person ultimately responsible for that,
13 Ms. Flannery, stated in her sworn affidavit that she did not
14 conduct an investigation and is not conducting an
15 investigation into any defense team member.
16 So that bureaucratic point is not what we are trying
17 to get at. What we are trying to get at, there is no criminal
18 referral, there is no pending investigation, there is no
19 investigation at this time.
20 Thank you, Your Honor.
21 MJ [COL POHL]: Thank you. Obviously we are not going to
22 resolve all of 292 today since we have other pleadings to
23 come.

1 I just want to make it clear so there is no
2 misunderstanding, the current state of 292 is that the order
3 issued in 292QQ is the order in this case, and whether that
4 means -- and I got a detailing memorandum from Colonel
5 Mayberry for independent counsel for Mr. Binalshibh.
6 Now, it may turn out as we litigate this that the
7 court reconsiders whether such counsel needed to be appointed
8 or not, but I want to make it very clear that that's the
9 current order in place, and so I don't expect to hear two
10 months from now that the independent counsel has done nothing
11 because there is a reconsideration request. When an order is
12 issued, that order controls until it is changed or the motion
13 for reconsideration itself is granted, meaning that the order
14 is held in abeyance. Neither one have occurred at this point,
15 and therefore to make it very clear, that's the current state
16 of the record and we will address the rest of 292 at the next
17 session.
18 That being said, we are going to take a half-hour
19 break, which we normally do in the morning. We will pick up
20 at that point with 299. The only other issue that I think we
21 can address this session deals with -- if defense wishes to
22 deal with it, deals with the continuing representation with
23 Major Wright, whether that's still an issue that you want me

1 to address. It seems to me it's independent from necessarily
2 292.
3 LDC [MR. NEVIN]: Yes, please, I believe it is,
4 Your Honor.
5 MJ [COL POHL]: And also Ms. Bormann -- and I may have the
6 names wrong here -- there was a motion dealing with -- I have
7 got my counsel -- dealing with Commander Hatcher. Has that
8 been resolved?
9 LDC [MS. BORMANN]: Well, as we stand here right now, it
10 appears the Secretary of the Navy has weighed and it appears
11 Colonel Hatcher's orders will be extended. As far as I am
12 aware, it has not been processed by the Navy. So we are in a
13 position we are hoping we can withdraw it. We have been
14 in ----
15 MJ [COL POHL]: Do you want to address it today at all or
16 just say let's keep it on the docket?
17 LDC [MS. BORMANN]: I would say keep it out there until
18 the orders get actually posted. As of yesterday they hadn't
19 been, so we are simply in a holding pattern.
20 MJ [COL POHL]: I want to be clear. I am talking about
21 the way ahead, because these prosecutors are not involved in
22 this issue. When we switch out, I don't want to get into any
23 merits. I just want to say you don't need to address it

1 today, but you want to keep it out there?
2 LDC [MS. BORMANN]: And I advised General Martins of that
3 fact earlier this week when we were told that the Secretary of
4 the Navy has weighed in.
5 MJ [COL POHL]: Was there an issue with the Commander Tri
6 Nhan?
7 LDC [MS. BORMANN]: I think he is in the same situation.
8 MJ [COL POHL]: If you want to talk to him, you can talk
9 to him during the break.
10 Major Wright.
11 DDC [MAJ WRIGHT]: Briefly, sir, as to the way ahead,
12 certain portions of the 282 series are ex parte and under seal
13 as related to confidential client matters. So just for
14 housekeeping.
15 MJ [COL POHL]: Okay. I got it. That being said ----
16 STC [MR. CAMPOAMOR-SANCHEZ]: Yes, Your Honor, I just want
17 to confirm you are not going to need the Special Review Team
18 for the rest of this week?
19 MJ [COL POHL]: No. I will probably need to see you in
20 October.
21 STC [MR. CAMPOAMOR-SANCHEZ]: We were planning on that,
22 Your Honor. Thank you.
23 MJ [COL POHL]: The commission is in recess until 1110.

1 [The R.M.C. 803 session recessed at 1046, 14 August 2014.]

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